ORIGINAL IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO. 90-1577

RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES OF AMERICA,

Petitioner,

v.

R.L.C., a juvenile,

Respondent.

MOION FOR LEAVE TO

PROCEED

IN FORMA PAUPERIS

Pursuant to Title 18, United States Code, Section 3006A(d)(6) and Rule 46 of this Court, respondent asks leave to file the attached Respondent's Brif in Opposition to the petition for Writ of Certiorari from the United States Court of Appeals for the Eighth Circuit without prepayment of fees or costs and to proceed in forma pauperis. Respondent was represented by counsel appointed pursuant to 18 U.S.C. § 3006A in the district court and on appeal to the Eighth Circuit Court of Appeals.

Dated: May 29, 1991

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KATHERIAN D. ROE
Assistant Federal Defender

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

# RESPONDENT'S BRIEF IN OPPOSITION

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## TABLE OF CONTENTS

QUESTIONS PRESENTED..... 1
TABLE OF CONTENTS..... 2
TABLE OF AUTHORITIES..... 3
JURISDICTION..... 5
STATEMENT..... 6
REASONS FOR DENYING THE WRIT..... 8
CONCLUSION..... 20
APPENDIX A..... 1a
APPENDIX B..... 15a
APPENDIX C..... 17a
APPENDIX D..... 18a

## TABLE OF AUTHORITIES

**CASES:**


Brown Transport Corp. v. Atcon, Inc, 439 U.S. 1014 (1978) . . 13

Chelsea House Publishers v. Nicholstone Book Bindery Inc., 455 U.S 994 (1982) . . . . . 13

Ex Parte Ralston, 119 U.S. 613, 7 S.Ct. 317 (1887) . . . . . 9

Gilliard v. Mississippi, 464 U.S. 867 (1983) . . . . . 12

Greco v. Orange Memorial Hospital Corp., 423 U.S. 1000 (1975) 13

Kamberos v. GTE Automatic Electric Inc., 454 U.S. 1060 (1981) 13

McCray v. New York, 461 U.S. 961, 963 (1983) . . . . . 12

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 332 (1977) . 9, 10

Sibron v. New York, 392 U.S. 40, 53, 88 S.Ct. 1889, 1897 (1968) . . . . . 9, 10

St. Pierre v. United States, 319 U.S. 41, 63 S.Ct. 911 (1943) . . . . . 8, 9

Towson v. United States, 455 U.S. 1006 (1982) . . . . . 13

United States v. Marco L., 868 F.2d 1121, 1124 (9th Cir.), cert. denied 110 S.Ct. 369 (1989) . . . . . 12


**STATUTES:**


Comprehensive Crime Control Act of 1984 (CCCA), Pub. L. No. 98-473, Tit. II, § 218(a)(8), 98 Stat. 2027 . . . . 16

Youth Corrections Act, 18 U.S.C. 5005-5024 (1982) . . . . . 17

Youth Corrections Act, Pub.L. 98-473, Title II, 218(g), 98 Stat. 2031 (1984) . . . . . 18

18 U.S.C. 1112(a) . . . . . 5

18 U.S.C. § 3581 (b) . . . . . 16

18 U.S.C. 5031 . . . . . 5, 7

18 U.S.C. 5037 . . . . . 7, 14, 15, 17






**STATUTES CONTINUED:**


18 U.S.C. 5037(a) (1988) . . . . . 15

18 U.S.C.§ 5037(c) . . . . . 14, 15

18 U.S.C. 5037(c)(1) . . . . . 6, 14, 15

18 U.S.C. § 5037(c)(1)(B) . . . . . 14, 16, 18

28 U.S.C. 994 . . . . . 15

28 U.S.C. 1254(1) . . . . . 4


**CONSTITUTION AND REGULATIONS:**


U.S. Const. Amend. V (Due Process Clause) . . . . . 17


**MISCELLANEOUS:**


Justice Brennan, Some Thoughts on the Supreme Court's Workload, 66 Judicature 230, 233 (1983) . . . . . 12

Justice Stevens, Some Thoughts on Judicial Restraint, 66 Judicature 177, 183 (1982) . . . . . 12

Rule 41(b), Federal Rules of Appellate Procedure . . . 8, 10, 11

Sup. Ct. R. 22.2. . . . . .17

S. Rep. No. 225, 98th Cong., 2d Sess. 114, reprinted in 1984 U.S. Code Cong. & Admin. News 3297 . . . . . 16

S. Rep. No. 278, 99th Cong., 2d Sess 3 (1986) . . . . . 17

U.S.S.G. ch.5, pt. A--Sentencing Table . . . . . 17

United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988) . . . . . 15

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UNITED STATES OF AMERICA,

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v.

R.L.C., a juvenile,

Respondent.

## JURISDICTION

The judgement of the court of appeals was entered on September 12, 1990. A petition for hearing and suggestion for rehearing en banc was denied on December 18, 1990. App., infra, 15a. On March 12, 1991, Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including April 17, 1991. The petitioner asserts that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1). Respondent asserts that the Court lacks the jurisdiction to hear this case because the case is moot. Respondent's mootness argument will be fully discussed in the portion of the brief entitled, "Reasons For Denying the Petition".



## STATEMENT

1. Respondent, a juvenile, was charged in a one-count information with involuntary manslaughter. The charges arose from a car accident which had occurred on the Red Lake Indian Reservation. That car accident had resulted in the death of La Tesha Mountain. La Tesha had died as a result of head and neck injuries that she received when she was thrown from the back seat to the front seat of the car during the accident. App., infra, 2a.

2. The car which struck the vehicle that La Tesha Mountain was riding in, was a stolen Chevrolet Camaro occupied by respondent and James White, Jr. Both admitted to an evening of heavy drinking which had resulted in their stealing the car and driving it around the reservation. App., infra, 2a.

3. Following a trial to the court, the district court found that respondent had been driving the car while intoxicated and in a reckless manner at the time of the accident which resulted in Mountain's death. The court found that this conduct constituted involuntary manslaughter, in violation of 18 U.S.C. 1112(a). The court found respondent to be a juvenile delinquent under 18 U.S.C. 5031. App., infra, 2a-3a.

4. On January 24, 1990, the court sentenced respondent to three years detention to be served at the Missouri River Adolescent Center in Chamberlain, South Dakota. App., infra, 3a.

5. Respondent appealed. The court of appeals upheld the finding of delinquency, but vacated the sentence and remanded the case for resentencing. App., infra, 1a-14a. It was the court's

determination that the thirty-six month sentence that the respondent had received, exceeded the period of confinement that he could have received if he "had been tried and convicted as an adult". Thus the thirty-six month sentence imposed was in violation of 18 U.S.C. 5037(c)(1). App., infra, 3a-14a. The court summarized its findings in the following way: "We hold that the phrase 'maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult' prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines." App., infra, 12a-13a.

6. The government filed a petition for rehearing and suggestion for rehearing en banc. The panel denied the petition for rehearing and the full court declined the suggestion for rehearing en banc. App., infra, 17a.

7. On January 25, 1991, the district court resentenced the respondent to a term of eighteen months. App., infra, 18a.



**REASONS FOR DENYING THE PETITION**

The Petitioner failed to petition for a stay of the Eighth Circuit Court of Appeals mandate in this case. As a result, the respondent was resentenced on January 24, 1991, and as of March 20, 1991 had completed his sentence. There are no collateral consequences that could result from the ruling the Petitioner asks this Court to make. Therefore, this case is moot.

The Eighth Circuit Court of Appeals fully considered and correctly decided the issue presented in the Petition for Writ of Certiorari. In the petition, the Petitioner has overstated the opinion set forth by the court of appeals. The court did not hold that the sentencing guidelines "must" be applied when determining a juvenile's sentence. Rather, the court recognized that 18 U.S.C. § 5037 prohibits a court from sentencing a juvenile to a term of imprisonment greater than he could have received if he had been tried and convicted as an adult. In an effort to comply with this provision, the court of appeals held that the sentencing court must look to the guidelines as a guide to determine what the maximum sentence for an adult would have been. Once that determination has been made, the sentencing court may then determine the appropriate sentence for the juvenile.

1. This Court lacks jurisdiction to consider this case. On December 26, 1989, the United States District Court Judge Harry H. MacLaughlin adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031. Pursuant to 18 U.S.C. § 5037 the court sentenced R.L.C. to a term of thirty-six months "official detention", to be

served at a juvenile facility. Respondent appealed to the Eighth Circuit Court of Appeals. On September 12, 1990, the Court of Appeals vacated the sentence imposed by the District Court and remanded the case for resentencing. The government filed a petition for rehearing and suggestion for rehearing en banc, which was denied by the Court on December 18, 1990. However, the government did not petition the appellate court for a stay of the mandate under Rule 41(b) of the Rules of Appellate Procedure. On January 25, 1991, the district court resentenced the respondent to a term of 18 months. On March 20, 1991, respondent was released from custody, having completed his sentence. The government filed its petition for writ of certiorari on April 17, 1991.

Respondent has completed his sentence. Further, there are no collateral consequences that could result from the ruling the government asks this Court to make. The case is therefore moot.

In St. Pierre v. United States, 319 U.S. 41, 63 S.Ct. 910 (1943), this Court held that if a petitioner has already served his or her sentence, "the case is moot because, after petitioner's service of his sentence and its expiration, there was no longer a subject matter on which the judgment of this Court could operate." St. Pierre, 319 U.S. at 42, 63 S.Ct. at 911. The Court also held that the petitioner could have taken steps to preserve his case, but that "he did not apply to this Court for a stay or a supersedeas," an avenue likewise available to the Petitioner in this case. Id. The Court recognized two situations overriding mootness where the imposed sentence had been served: 1) where the



petitioner, through no fault of his own, could not have brought the case prior to the completion of the sentence; and 2) where further penalties could be imposed as a result of the satisfied judgment (the "collateral consequences" exception). Id. 319 U.S. at 43, 63 S.Ct. at 911.

In Sibron v. New York, 392 U.S. 40, 53, 88 S.Ct. 1889, 1897 (1968), the Court expanded on the St. Pierre exceptions, stating that a criminal case becomes moot by 1) the full service of a prison sentence, if 2) no collateral legal consequences will be imposed on the basis of the challenged conviction. In Sibron, the petitioner could not have obtained review of his conviction before completing his six month sentence for two reasons. First, New York law prohibited bail for the offense of which Sibron had been convicted. Second, a stay of mandate or supersedeas "may issue only in connection with an appeal actually taken," and Sibron did not have the opportunity to appeal his case prior to serving his sentence. Sibron, 392 U.S. at 53 n.13, 88 S.Ct. at 1897 n.13 (citing Ex parte Ralston, 119 U.S. 613, 7 S.Ct. 317 (1887)).

In Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 332 (1977), this Court stated that completion of a sentence does not necessarily preclude the government from petitioning for writ of certiorari:

> If the prospect of the State's visiting such collateral consequences on a criminal defendant who has served his sentence is a sufficient burden as to enable him to seek reversal of a decision affirming his conviction, the prospect of the State's inability to impose such a burden following a reversal of the conviction of a criminal defendant in its own courts must likewise be sufficient to enable the State to obtain review of its claims on the

> merits here. In any future state criminal proceedings against respondent, this conviction may be relevant to setting bail and length of sentence, and to the availability of probation.

Id. 434 U.S. at 109 n.3, 98 S.Ct. at 332, n.3 (citations omitted). This line of decisions, including Sibron and Mimms, deal with cases where reversal of the underlying conviction is at issue. They address the collateral consequences arising from any conviction; specifically bail, length of subsequent sentences and the availability of probation. In the present case, the Eighth Circuit did not reverse the District Court's finding of juvenile delinquency. Rather, the Court of Appeals merely remanded for resentencing. Respondent's sentence was reduced from 36 months to 18 months. The collateral consequences arising from the District Court's finding of juvenile delinquency were unaffected by the appeal. Thus, the concern enunciated in Mimms -- that the government not be foreclosed by the doctrine of mootness from obtaining review of a reversed conviction where collateral consequences followed from that conviction -- simply does not exist in the case at bar.

Petitioner could have acted to prevent mootness. However, by failing to petition for a stay of the Eighth Circuit's mandate before filing its petition for writ of certiorari, petitioner allowed respondent to complete his full sentence. Rule 41(b) of the Rules of Appellate Procedure is a measure by which a petitioner may stay the mandate of an appellate court during the pendency of review by the Supreme Court. The stay can continue until final disposition by the Supreme Court. Rule 41(b), Federal Rules of



Appellate Procedure. A stay is appropriate when the petitioner would be adversely affected if the judgment of the lower court were carried out prior to Supreme Court review.

Based on petitioner's failure to request a stay under Rule 41(b), the mandate was issued and respondent was resentenced by the district court. Respondent thus completed his sentence prior to the government's filing of the petition. In other words, petitioner could have prevented mootness, but failed to take the appropriate procedural steps to do so.

2. In its opinion, the Eighth Circuit recognized that its holding conflicted with the Ninth Circuit opinion in United States v. Marco L., 868 F.2d 1121, 1124 (9th Cir.), cert. denied 110 S.Ct. 369 (1989). The only apparent conflict is between the Eighth and Ninth Circuits. This Court's policy of "letting tolerable conflicts go unaddressed until more than two courts of appeals have considered a question" should apply here. Justice Brennan, Some Thoughts on the Supreme Court's Workload, 66 Judicature 230, 233 (1983).

> The existence of differing rules of law in different sections of our great country is not always an intolerable evil. . . . It would be better, of course, if federal law could be applied uniformly in all federal courts, but experience with conflicting interpretations of federal rules may help to illuminate an issue before it is finally resolved and thus may play a constructive role in the lawmaking process. The doctrine of judicial restraint teaches us that patience in the judicial resolution of conflicts may sometimes produce the most desirable result.

Justice Stevens, Some Thoughts on Judicial Restraint, 66 Judicature 177, 183 (1982). See also McCray v. New York, 461 U.S. 961, 963 (1983) (Stevens, J.) (certiorari denied where issues needed further development by lower courts); Gilliard v. Mississippi, 464 U.S. 867 (1983) (Marshall, J. dissent from denial of certiorari) (Court should have postponed consideration of the issue until federal courts had experimented with a solution to the problem).

The time is not ripe for the Court to resolve the apparent conflict. As in these cases, awaiting further litigation in the lower courts is likely to produce a consensus or a satisfactory majority view among the circuits.



The Court has often denied certiorari even when faced with direct conflicts on important issues. In Brown Transport Corp. v. Atcon, Inc., 439 U.S. 1014 (1978), Justice White, in his dissent, detailed 14 cases on the list of the opening day of the 1978 Term in which the Court refused to grant certiorari despite conflicts between appellate courts or with the Court's precedents. See also Greco v. Orange Memorial Hospital Corp., 423 U.S. 1000 (1975); Kamberos v. GTE Automatic Electric Inc., 454 U.S. 1060 (1981); Chelsea House Publishers v. Nicholstone Book Bindery Inc., 455 U.S. 994 (1982); Towson v. United States, 455 U.S. 1006 (1982).

Further, the issue in this case is not likely to arise frequently. The number of juvenile delinquency proceedings in federal courts is significantly less than 1% of the total number of federal criminal cases heard each year. In 1990, there were a total of 47,335 federal criminal cases versus 168 juvenile delinquency proceedings.[1] Thus, the apparent conflict involved in this case does not have widespread significance.

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[1] In 1986, there were a total of 41,420 federal criminal cases versus 129 juvenile proceedings; in 1987, 43,280 versus 81 in 1988, 43,688 versus 132; and in 1989, 46,795 versus 172. Administrative Office of the U.S. Courts, Division of Statistics Federal Judicial Workload Statistics, Table D (December 31, 1986 - December 31, 1990).

3. The Eighth Circuit Court of Appeals fully considered and correctly decided the issue presented in this case. The court of appeals' analysis of 18 U.S.C. § 5037 and the related legislative history clearly indicates that Section 5037(c)(1) prohibits a court from sentencing a juvenile to a term of imprisonment that would be greater than the term he could have received if he had been an adult sentenced under the sentencing guidelines.

a. In an effort to resolve the issue presented, the Eighth Circuit began with an analysis of Section 5037. However, because Section 5037 provided no definition of the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult", the court also undertook an extensive analysis of Congress' intent in enacting Section 5037(c)(1)(B).

The language of Section 5037 provides that a juvenile's sentence must be the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C.§ 5037(c) (1988). The court reasoned that the language "if the juvenile had been tried and convicted as an adult" suggested that in determining the maximum sentence that the juvenile would be subject to, the sentencing court should consider "those individualized, subjective factors that would be relevant to sentencing the same individual as an adult." App., infra, 5a.



If R.L.C. had been an adult the sentencing guidelines would have applied. It is not disputed that the sentencing guidelines themselves do not apply to individuals sentenced as juveniles. See United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). However, Section 5037 specifically provides that the sentencing court should consider "any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994" when determining the disposition that would be appropriate for the offense. 18 U.S.C. 5037(a) (1988).

By looking to the guidelines in an effort to determine what the applicable guideline range would be if the juvenile offender was in fact an adult, the sentencing court would then use the resulting range as a guide in sentencing the juvenile. As stated by the Eighth Circuit, this would "eliminate unwarranted disparity between juvenile and adult sentences" and "further Section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults." App., infra, 6a.

Petitioner argues that the most "natural" reading of the "maximum punishment" clause in 13 U.S.C. 5037(c)(1) refers to the "maximum term of imprisonment authorized in the law defining the offense." Petition at 8. There is nothing natural about this interpretation. If in fact this was Congress' intent, it would have been simple for the clause to have been worded in exactly that way. However, it is clear from the language of the statute and the legislative history that what Congress intended was that a juvenile

offender not be subject to a longer term of imprisonment than he could have received "if he had been tried and convicted as an adult." This is what the clause states, and is the most natural reading of the "maximum punishment" clause.

The Eighth Circuit conducted a detailed review and analysis of the legislative history of Section 5037 (c)(1)(B) and the Comprehensive Crime Control Act of 1984 (CCCA).[2] After a complete review and analysis, which will not be included in the text of respondent's brief,[3] the court determined that Congress had considered and rejected establishing statutory maximum sentences as the maximum sentence of imprisonment that a juvenile offender could receive.[4] The CCCA's legislative history indicates that upon the effective date of the sentencing guidelines, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581 (b), to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, reprinted in 1984 U.S. Code Cong. & Admin. News 3297. The guidelines were constructed to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or

[2]Section 5037 (c)(1)(B) was amended as part of the Comprehensive Crime Control Act. It was this legislation that authorized the establishment of the sentencing guidelines.

[3]The Eighth Circuit's analysis of the relevant legislative history is a lengthy one. In an effort to comply with Sup. Ct. R. 22.2, which encourages brevity, respondent refers the Court to Appendix A, pages 5a-12a.

[4] A brief discussion of the legislative history relating to this issue is contained in App., infra 7a, footnote 1.



those who commit an offense under particularly egregious circumstances." Id.

Under the government's interpretation of the "maximum punishment" clause of Section 5037, a sentencing court could sentence any juvenile adjudicated a delinquent for committing involuntary manslaughter to three years of imprisonment.[5] However, an adult could be sentenced to three years only if he had an extensive criminal background or had committed an offense which involved aggravating factors qualifying as grounds for an upward departure.[6] See U.S.S.G. ch.5, pt. A--Sentencing Table.

Promoting such a disparity in sentencing was not the legislative intent underlying Section 5037. Congress amended Section 5037 in 1986. The legislative history indicates that the purpose of the amendment was to ensure that juvenile offenders would not receive a more severe punishment than adult offenders. See S. Rep. No. 278, 99th Cong., 2d Sess 3 (1986).

b. The petitioner argues that under the Youth Corrections Act, 18 U.S.C. 5005-5024 (1982), the courts consistently held that it did not violate equal protection principles or the Due Process

[5]R.L.C. was originally sentenced to serve three years "official detention".

[6]For an adult offender with no criminal history to receive a sentence of three years imprisonment for the offense of involuntary manslaughter, the sentencing court would have to find aggravating factors sufficient to increase the base offense level by five levels.

Clause[7] for a juvenile offender to be sentenced to a period of custody that exceeded the maximum possible for an adult who had committed the same crime. But in 1984 Congress implemented significant changes with respect to juvenile sentencing with the enactment of the Comprehensive Crime Control Act. The most significant change was that the CCCA repealed the Youth Corrections Act in its entirety. Pub.L. 98-473, Title II, 218(g), 98 Stat. 2031 (1984). And in making such changes, CCCA's explicit goal was to promote fairness, consistency and uniformity in sentencing.

If a Court were to adopt petitioner's reading of the "maximum punishment" clause, the essential purposes of the CCCA and Congress' directive would be undercut. Juveniles would be in jeopardy of being subjected to proportionally more severe and disparate sentences than adult offenders who committed the same offense. The Eighth Circuit gave careful consideration to the consequences of such an interpretation when it rejected the government's argument.

In summary, the Eighth Circuit's analysis of Section 5037(c)(1)(B) was both thorough and correct.

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[7]Respondent is not asserting that the sentencing disparity is a violation of equal protection or due process. Respondent is asserting that 18 U.S.C. section 5037 prohibits a sentencing court from sentencing a juvenile offender to a term of imprisonment greater than what he could have received if he had been tried and convicted as an adult.



## CONCLUSION

For all of the reasons set forth, the petition should be denied.

Dated: May 23, 1991

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## APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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No. 90-5048

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UNITED STATES, APPELLEE

*v.*

R. L. C., JUVENILE MALE, APPELLANT

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Appeal from the United States District Court
for the District of Minnesota

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Submitted: August 14, 1990
Filed: September 12, 1990

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Before LAY, Chief Judge; HEANEY and BRIGHT, Senior Circuit Judges.

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HEANEY, Senior Circuit Judge.

R.L.C., a juvenile, appeals from the district court's finding of juvenile delinquency for involuntary manslaughter pursuant to 18 U.S.C. §§ 5031, 1112(b), and 1153. He also appeals from a sentence of three years detention in a federal juvenile correctional facility. We affirm the finding of juvenile delinquency but vacate R.L.C.'s sentence and remand to the district court for resentencing.





## BACKGROUND

R.L.C., 16, was charged in a one-count information with involuntary manslaughter on the Red Lake Indian Reservation for causing the death of LaTesha Lynn Mountain while driving a car in a reckless manner while intoxicated.

Following an evening of heavy drinking, R.L.C. and another juvenile, James White, Jr., stole a car on the Red Lake Reservation. Shortly after the car was stolen, a witness saw it rear-end a car driven by Deborah Garrigan while travelling east on Highway 1 in Red Lake. Mountain, Garrigan's daughter, died from head injuries she received when she was thrown from the back seat to the front seat of Garrigan's car during the accident. The stolen car was later found in flames in the woods southwest of the accident scene.

R.L.C. and White both admitted drinking, stealing the car, and driving it at some point during the evening. Both denied having driven the car, however, at the time the accident occurred. Three witnesses, including White, placed R.L.C. behind the wheel at or immediately before the time of the accident. R.L.C. stated that he was sleeping in the passenger seat when the accident occurred, and did not awaken until the car crashed and ignited in the woods.

Following a trial to the court, the district court found that R.L.C. had been driving the car while in-

toxicated and in a reckless manner at the time of the accident which caused Mountain's death and that this conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a). The district court adjudged R.L.C. to be a juvenile delinquent under 18 U.S.C. § 5031.

At sentencing, the prosecution requested that R.L.C. receive the statutory maximum penalty for involuntary manslaughter under 18 U.S.C. § 1112 (b), three years. The district court acceded to the request and sentenced R.L.C. to three years detention at the Missouri River Adolescent Center in Chamberlain, South Dakota. R.L.C. appeals.

## DISCUSSION

R.L.C. raises two issues on appeal. He claims that the evidence at trial was insufficient to prove beyond a reasonable doubt that he drove the car at the time of the accident. After carefully reviewing the record, we believe the trial testimony adequately supports the district court's finding that R.L.C. was driving the car when the accident occurred. Accordingly, R.L.C.'s sufficiency of the evidence claim is without merit.

R.L.C. also claims that the district court erred in sentencing him to the three-year maximum statutory penalty for involuntary manslaughter when an adult sentenced for the same offense under the sentencing guidelines would have received a maximum sentence of only twenty-one months.

As a juvenile delinquent, R.L.C. was sentenced under 18 U.S.C. § 5037. Section 5037(c) states:

> The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—



> (1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—
>
> (A) the date when the juvenile becomes twenty-one years old; or
>
> (B) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult[.]

18 U.S.C. § 5037(c)(1) (1988).

R.L.C. argues that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" means the maximum sentence an adult could receive under the sentencing guideline for the same offense. Guideline section 2A1.4(a)(2) provides a base offense level of 14 for involuntary manslaughter caused by reckless conduct. At a criminal history category of I, a base offense level of 14 yields a sentencing range of 15-21 months. R.L.C. therefore argues that his sentence of three years violates 18 U.S.C. § 5037 (c)(1)(B).

The government argues that "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" refers to the statutory maximum sentence for the particular offense committed. The maximum sentence for involuntary manslaughter under 18 U.S.C. § 1112 is three years. 18 U.S.C. § 1112(b) (1988). The government argues that R.L.C.'s three-year sentence is the same as the maximum term of imprisonment an adult could have received if convicted of the same offense, and that the sentence therefore is permitted under 18 U.S.C. § 5037(c)(1)(B).

Section 5037 provides no definition of "maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." In light of this failure, we must determine the intent of Congress in enacting section 5037(c)(1)(B) to resolve its ambiguity. *See United States v. Jones*, 811 F.2d 444, 447 (8th Cir. 1987).

In construing a statute to ascertain its drafters' intent, we look first to the language of the statute itself, then to its legislative history. *See Blum v. Stenson*, 465 U.S. 886, 896 (1984). As further aids in the determination of legislative intent, we may also properly consider a statute's subject matter, the object to be accomplished, the purpose to be served, the underlying policies, and the consequences of various interpretations. *Kifer v. Liberty Mut. Ins. Co.*, 777 F.2d 1325, 1332 (8th Cir. 1985). An examination of all these factors persuades us that Congress did not intend juvenile delinquents ordinarily to be subject to penalties harsher than those received by adults convicted of the same offense.

Section 5037(c)(1)'s language expresses a preference for juvenile sentences which are the lesser of the period of time between sentencing and the juvenile's twenty-first birthday and "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult." 18 U.S.C. § 5037(c) (1988). The phrase "if *the juvenile* had been tried and convicted as an adult" suggests that the sentencing court should focus on the actual maximum sentence the particular juvenile in question would have been subject to but for his age, considering those individualized, subjective factors that would be relevant to sentencing the same individual as an adult. Had R.L.C. been tried for and



convicted of involuntary manslaughter as an adult, he would have been sentenced under the sentencing guidelines, which provide a maximum sentence of 21 months for an individual with R.L.C.'s criminal history. The sentencing guidelines establish the permissible maximum and minimum sentence in all cases except those in which the sentencing court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence [above or below the guideline range]." 18 U.S.C. § 3553(b) (1988).

The sentencing guidelines themselves do not apply to individuals sentenced as juveniles. *See* United States Sentencing Commission, Questions Most Frequently Asked About the Sentencing Guidelines 1 (Nov. 30, 1988). Section 5037 provides, however, that after a finding of juvenile delinquency, the court should consider any pertinent policy statements promulgated by the Sentencing Commission in determining the disposition appropriate to the offense. 18 U.S.C. § 5037(a) (1988). Using the sentencing guidelines to fix the maximum sentence a juvenile delinquent could receive would serve as a guide to courts to eliminate unwarranted disparity between juvenile and adult sentences. Using the upper limit of the applicable guideline sentencing range as the maximum sentence a juvenile could receive thus would further section 5037(c)'s goal of avoiding harsher penalties for juvenile offenders than for similarly situated adults.

Section 5037's legislative history also suggests that Congress intended the "maximum term of imprisonment" in subsection (C)(1)(B) to be the maximum

term the juvenile in question actually could have received if sentenced as an adult under the guidelines, rather than the statutory maximum sentence for the offense committed.

Section 5037(c)(1)(B) was amended as part of the Comprehensive Crime Control Act of 1984 (CCCA), the same legislation that authorized the establishment of the sentencing guidelines. *See* Pub. L. No. 98-473, Title II, 98 Stat. 1976 (1984).[1] This legislation made sweeping reforms in the sentencing of both adult and juvenile federal offenders. The CCCA's sentencing reform policies and goals, when considered in conjunction with other changes the CCCA made in the disposition of juvenile offenders, persuade us that Congress did not intend the real time served by ju-

[1] The CCCA's legislative history states that: "[p]roposed 18 U.S.C. 5037(c) provides the maximum periods for official detention of a juvenile found to be a juvenile delinquent." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. The 1984 amendment to section 5037(c)(1)(B) differed slightly from the current version of the statute. A 1986 amendment, which took effect on November 1, 1987, deleted the words "by section 3581(b)" following the phrase "maximum term of imprisonment that would be authorized." *See* Pub. L. No. 99-646, § 21(a)(2) (1986) (cited in 18 U.S.C.A. § 5037 historical and statutory notes (West Supp. 1990)). Section 3581(b), also enacted as part of the CCCA, sets forth the maximum authorized terms of imprisonment for nine classes of federal felonies and misdemeanors. 18 U.S.C. § 3581(b) (1988). The import of the 1986 amendment is that Congress reconsidered and rejected establishing these statutory maximum sentences as the maximum terms of imprisonment juvenile delinquents could receive. The language of the 1984 amendment also suggests that if Congress wished to subject juveniles to the maximum sentences authorized by particular statutes, it knew how to say so.



venile offenders to exceed the real time that would be served by adults convicted of similar crimes.

The CCCA sought to establish a comprehensive and consistent system of sentencing that would promote fairness by eliminating unwarranted sentence disparity. S. Rep. No. 225, 98th Cong., 2d Sess. 50-52, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3133-35; *see also* U.S.S.G. ch. 1, pt. A, § 3 The Basic Approach (policy statement) (Congress' goals in sentencing reform were to achieve honesty, uniformity, and proportionality). Additionally, the legislation sought to promote certainty in sentencing by abolishing the parole system in federal law. *See* Pub. L. No. 98-473, Title II, § 218(a)(5), 98 Stat. 2027 (Oct. 12, 1984); S. Rep. No. 225, 98th Cong., 2d Sess. 56-58, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3239-41.

The CCCA's legislative history notes that the amended section 5037(c) "parallels the 1974 Act provision set forth in current law for juveniles under 18 at the time of the proceeding." S. Rep. No. 225, 98th Cong., 2d Sess. 155, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3338. Juveniles sentenced under the forerunner of current section 5037(c)(1)(B) were immediately eligible for parole. 18 U.S.C. § 5041 (1982) (repealed effective Nov. 1, 1987). The CCCA eliminated the possibility of parole for juveniles, meaning that each sentence imposed under section 5037(c)(1)(B) for offenses committed after November 1, 1987 represents the period of time the sentenced juvenile actually will be incarcerated. *See* S. Rep. No. 225, 98th Cong., 2d Sess. 156, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3339 ("It is expected that the time set at the disposition hearing for a juvenile placed in the custody of the Attorney

General pursuant to 18 U.S.C. 5037(b) will represent the real time to be spent by the juvenile in a manner similar to that for adult offenders under the bill.").

Under the law in existence prior to the CCCA, both juveniles and adults were subject to the statutory maximum sentence provided in the statute defining the offense. Both juveniles and adults were also eligible for parole; juveniles immediately on being sentenced, and adults after having served one-third of their sentences. *See* 18 U.S.C. §§ 5041, 4205 (1982) (repealed effective Nov. 1, 1987). After November 1, 1987, the effective date of the CCCA's sentencing reforms, adults were subject to the maximum sentences provided in the sentencing guidelines and were no longer eligible for parole. Juveniles were also no longer eligible for parole. The drafters of amended section 5037(c)(1)(B) intended its operation to parallel prior law. Accordingly, after November 1, 1987, juveniles sentenced under the amended statute should be subject to maximum, real time sentences no greater than those which adult offenders could receive under the sentencing guidelines.

Allowing a juvenile sentenced under section 5037 (c)(1)(B) to remain subject to the pre-guideline statutory maximum penalty provided for the offense committed would produce juvenile sentences inconsistent with those received by adult offenders and relatively harsher than those to which juveniles were subject before November 1, 1987. It seems unlikely that Congress would seek to reduce sentence disparity and to increase certainty by creating a system under which juvenile offenders would automatically become subject to the real time equivalent of pre-guidelines statutory maximum sentences while similarly situated adults would ordinarily be subject only



to the maximum guideline sentence for the same offense.

Once the sentencing guidelines took effect, Congress intended the statutory maximum sentences prescribed in 18 U.S.C. § 3581(b), *see supra* note 1, to represent "the greatest period the Congress should allow a judge to impose for an offense committed under the most egregious of circumstances." S. Rep. No. 225, 98th Cong., 2d Sess. 114, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3297. Similarly, the guidelines were to reserve the upper range of the maximum sentence "for offenders who repeatedly commit offenses or those who commit an offense under particularly egregious circumstances." *Id.* The CCCA's legislative history notes that these statutory maximum penalties were "no more intended to indicate the actual sentence a judge is expected to impose in each case than are the analogous provisions of current Federal statutes that also customarily set forth only the maximum limit on the judge's discretion." *Id.*

The Senate Judiciary Committee was also critical of existing statutory maximum penalties, suggesting that they could contribute to disparity and unfairness in sentencing. *See id.* at 39, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3222 ("These maximums are usually prescribed with little regard for the relative seriousness of the offense as compared to similar offenses."); *id.* at 87, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3270 ("Current maximum penalties are set at very uneven levels, and some are so inconsistent with the relative seriousness of the offense that the Sentencing Commission will probably find it necessary to recommend some amendments before sentencing guidelines are in place.").

These experts indicate that Congress intended statutory maximum penalties after the effective date of the sentencing guidelines to serve only as an upper limit on judicial discretion and to be applied to adults only in relatively rare and egregious circumstances. The guidelines' structure reflects this intent. For example, an adult convicted of involuntary manslaughter could be sentenced under the guidelines to the statutory maximum of three years imprisonment only if he had a criminal history category of V, representing the equivalent of four prior felony convictions.

Given the CCCA's goals of promoting consistency, uniformity, and fairness in sentencing and the relative disfavor in which its drafters held existing statutory maximum penalties, the interpretation of section 5037(c)(1)(B) which the government urges seems clearly wrong. If we were to adopt this construction, *any* juvenile adjudicated a delinquent for committing involuntary manslaughter could be sentenced to three years imprisonment with no possibility of parole. An adult convicted of the same offense, however, could receive the same sentence *only* if he had an extensive criminal record or if his commission of the offense included aggravating factors sufficient to increase his base offense level by five levels under the sentencing guidelines. *See* U.S.S.G. ch.5, pt. A—Sentencing Table. Such disparate results seem particularly unreasonable in light of the guidelines' admonition that age is not ordinarily a factor relevant to decisions among sentencing options. *See id.* § 5H1.1 (policy statement).

Rules of statutory construction also counsel against adopting an interpretation of section 5037(c)(1)(B) that would subject juveniles to the maximum statutory penalty for the offense committed. Criminal



statutes must be strictly construed. *See Dowling v. United States*, 473 U.S. 207, 213 (1985).[2] The rule of lenity states that a court cannot interpret a federal criminal statute "so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended." *Ladner v. United States*, 358 U.S. 169, 178 (1958). This principle of construction applies to sentencing provisions as well as to substantive criminal statutes. *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *Rowe v. Lockhart*, 736 F.2d 457, 461 (8th Cir. 1984). The rule of lenity favors the statutory construction that yields the shorter sentence.

Section 5037(c)(1)(B)'s language and legislative history, the policies underlying federal sentencing reform, the consequences of the possible interpretations, and the rule of lenity require us to adopt the construction of the statute that subjects juveniles sentenced under it to the lesser penalty; in this case, the construction urged by R.L.C. We hold that the phrase "maximum term of imprisonment that would be authorized if the juvenile had been tried and con-

[2] Although an adjudication of juvenile delinquency under 18 U.S.C. § 5031 is a determination of status rather than a criminal conviction, *United States v. Frasquillo-Zomosa*, 626 F.2d 99, 101 (9th Cir.), *cert. denied*, 449 U.S. 987 (1980), the Federal Juvenile Delinquency Act entitles a juvenile to all rights that would be accorded an adult in a criminal prosecution except that right to a grand jury indictment. S. Rep. No. 93-1011, 93d Cong., 2d Sess. 38, *reprinted in* 1974 U.S. Code Cong. & Admin. News 5321. Because statutes imposing penalties on juvenile delinquents involve deprivations of liberty similar to those attendant on criminal conviction, they should be construed no less strictly than statutes imposing criminal sanctions on adults.

victed as an adult" prohibits a court from sentencing a juvenile to a term of imprisonment greater than the juvenile could have received had he been sentenced as an adult under the sentencing guidelines.[3] This holding requires a particularized, subjective determination in each case of the upper limit of the appropriate guideline range. In cases involving aggravating circumstances not contemplated by the guidelines, a court sentencing a juvenile delinquent could make a finding that the prescribed range did

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[3] Our holding conflicts with that of the Ninth Circuit in *United States v. Marco L.*, 868 F.2d 1121, 1124 (9th Cir.), *cert. denied*, 110 S. Ct. 369 (1989). We find that decision's reasoning unpersuasive for the reasons discussed above, and believe that its holding will lead to inequitable results inconsistent with the goals of federal sentencing reform.

The Ninth Circuit found persuasive language in 18 U.S.C. § 3559, which deals with the classification of federal offenses under the sentencing guidelines. Subsection (a) provides that offenses which do not contain a letter classification can be classified based upon the length of imprisonment authorized by the statute defining the offense. The *Marco* court points to section 3559(b), which is entitled "Effect of Classification," and states that "[a]n offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the statute describing the offense." The *Marco* court reasoned that this language shows that "Congress has defined the 'maximum term of imprisonment' to be that term prescribed by the statute defining the offense." *Id.* at 1124. The sentence in section 3559(b), however, refers *only* to language in section 3559(a), and seeks to establish what no one contests: that no matter what letter classification an offense is given, the maximum term of imprisonment a judge can impose is the term listed in the statute defining the offense. Section 3559(b) was not meant to function as an overaching definition of "maximum term of imprisonment" for the entire federal criminal code.



not adequately reflect the severity of the offense, and could deviate from that range accordingly.

## CONCLUSION

We vacate the sentence imposed by the district court and remand this case for resentencing consistent with this opinion.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit

## APPENDIX B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

---

Crim. 4-89-175

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

R. L. C., a JUVENILE, DEFENDANT

---

## MEMORANDUM AND ORDER

Jerome G. Arnold, United States Attorney, and Jeanne J. Graham, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401, for plaintiff.

Katherian D. Roe, 174 U.S. Courthouse, Minneapolis, MN 55401, for defendant.

This matter is before the Court on a certification filed by the government pursuant to 18 U.S.C. § 5032 charging defendant, a juvenile within the meaning of 18 U.S.C. § 5031, and an Indian, with involuntary manslaughter pursuant to 18 U.S.C. §§ 1112 and 1153, such violation constituting "juvenile delinquency" pursuant to 18 U.S.C. § 5031.

Based on all the evidence presented at trial, and on the factual stipulations of counsel, the Court finds that the government has proven beyond a reasonable doubt that:

1. defendant was the driver of the vehicle which in the early morning hours of November 5, 1989 collided with a vehicle in which LeTesha Lynn Mountain was a passenger;



2. LeTesha Lynn Mountain died as a result of injuries sustained as a result of that collision;

3. defendant was driving the motor vehicle involved in the collision without the authorization of the vehicle's owner;

4. at the time of the collision defendant was intoxicated;

5. at the time of the collision defendant was operating the motor vehicle in a reckless and unsafe manner in excess of the applicable speed limit;

6. such conduct constituted involuntary manslaughter within the meaning of 18 U.S.C. § 1112(a);

7. at the time of the incident, defendant was an Indian, residing on and within the Red Lake Indian Reservation within Indian country in the State and District of Minnesota;

8. at the time of the incident defendant was a juvenile within the meaning of 18 U.S.C. § 5031.

Pursuant to the foregoing findings, IT IS HEREBY ADJUDGED that defendant is delinquent within the meaning of 18 U.S.C. § 5031. Defendant shall remain in the custody of his uncle, Donald Cook, until the Court holds a dispositional hearing pursuant to 18 U.S.C. § 5037.

/s/ Harry H. MacLaughlin
JUDGE HARRY H. MACLAUGHLIN
United States District Court

DATED: December 26, 1989

## APPENDIX C

## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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No. 90-5048MN

UNITED STATES, APPELLEE

*vs.*

R. L. C., JUVENILE MALE, APPELLANT

---

## ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

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Appellee's suggestion for rehearing en banc has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc. Judges Bowman, Wollman, Magill and Beam would have granted the petition.

Petition for rehearing by the panel is also denied.

December 18, 1990

ORDER ENTERED AT THE DIRECTION OF THE COURT

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit

☆ U. S. GOVERNMENT PRINTING OFFICE: 1991 282061 20430



AO 245 (Rev. 7/90) Judgment in a Criminal Case

APPENDIX D

# United States District Court

District of Minnesota

UNITED STATES OF AMERICA
V.
Robert Lee Cook
(Name of Defendant)

REVISED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed Prior to November 1, 1987)

Case Number: Cr. 4-89-175

Katherian Roe
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____
☒ was found guilty on count(s) 1 of 1 count information after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

| Title & Section | Nature of Offense | Date Offense Concluded | Count Number(s) |
|---|---|---|---|
| 18 1112(b) & 1153 | Involuntary manslaughter on an Indian reservation. | 11/5/89 | 1 |

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).

☐ Count(s) _____ (is)(are) dismissed on the motion of the United States

IT IS THE JUDGMENT OF THIS COURT THAT:
The defendant is hereby committed to the custody of the Bureau of Prisons of the United States for imprisonment for a term of 18 months.

The Court finds that Debra Garrigan is a victim of the defendant's offense within the meaning of the Victim and Witness Protection Act. The Court finds that the financial resources of the defendant are inadequate to justify any order of restitution.

A true copy in 1 sheets of
the original record in my custody.
Certified 1-22 19 91
Francis E. Dosal, Clerk
By: M. Chetick
Deputy Clerk

In addition to any conditions of probation imposed above, IT IS ORDERED that the conditions of probation set out on the reverse of this judgment are imposed.

AO 245 (Reverse)

## CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant:

1) shall not commit another federal, state or local crime.
2) shall not leave the judicial district without the permission of the court or probation officer;
3) shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5) shall support his or her dependents and meet other family responsibilities;
6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
15) shall pay any fine or obligation imposed by this judgment.
16) shall not possess a firearm or destructive device.

☐ IT IS FURTHER ORDERED that the defendant shall pay a special assessment of $ _____ , for count(s) _____ , which shall be due ☐ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

☒ The court orders commitment to the custody of the Attorney General and recommends:
The Court recommends the Missouri River Adolescence Center in Chamberlain, South Dakota as the place for service of the balance of the sentence.

Defendant's Soc. Sec. No.: 474-84-9551
Defendant's Date of Birth: 8/3/73
Defendant's Mailing Address:

In Custody

Defendant's Residence Address:

In Custody

January 25, 1991
Date of Imposition of Sentence

Signature of Judicial Officer

Judge Harry H. MacLaughlin
Name & Title of Judicial Officer

January 25, 1991
Date

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____ with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy Marshal